Marlin bte Rajiman & Ors v MAA Services Sdn Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02–101 OF 1992
ABDUL HAMID OMAR LP, EUSOFF CHIN AND WAN YAHYA SCJJ
6 MAY 1994

Labour Law *— Employment — Retrenchment — Employees paid retrenchment payments — Whether employees estopped from bringing claim in the Industrial Court*

Labour Law *— Industrial Court — Employees paid retrenchment payments — Whether employees estopped from bringing claim in the Industrial Court — Whether Industrial Court should have given parties opportunity to adduce evidence and then decide on the evidence whether termination result of genuine retrenchment exercise or was without just cause — Industrial Relations Act 1967 s 30(5) — Industrial Court Rules 1967 r 22(1) & (2)*

The respondent retrenched a few of his employees ('the appellants') and the appellants later acknowledged by letter, the receipt of the retrenchment payments. However, the appellants claimed that they did so under protest. They then made a representation to the Director General of Industrial Relations that they considered themselves to have been dismissed without just cause or excuse and that they ought to be reinstated to their former employment. The Director General referred the matter to the Minister who referred the dispute to the Industrial Court. At the hearing before the Industrial Court, counsel for the respondent raised a preliminary objection stating that the appellants were estopped from bringing the matter before the Industrial Court because they had already received their retrenchment payments. The Industrial Court dismissed the claim on the preliminary objection alone.

An application for certiorari to quash the award of the Industrial Court was then made to the High Court. The High Court judge decided that the Industrial Court committed an error going to jurisdiction because estoppel did not, under s 30(5) of the Industrial Relations Act 1967, apply to industrial adjudication. The judge, however, found that the Industrial Court had dealt with the merits of the case and he confirmed the dismissal of the appellants' claim by the Industrial Court.

Held, allowing the appeal:
The Industrial Court had dismissed the appellants' claim purely on the ground of technicalities, ie on estoppel. The Industrial Court should have given the parties the opportunity to adduce evidence and then decided on the evidence whether the termination was the result of a genuine retrenchment exercise or a dismissal without just cause. To determine the issue of whether it was retrenchment or dismissal, it was necessary for the Industrial Court to investigate the facts and

A analyse them and make its findings before applying the law to those findings. This, the Industrial Court had failed to do, and that was an error of law affecting its jurisdiction.

[Bahasa Malaysia summary

B Responden telah mengurangkan beberapa orang pekerjanya ('perayu') dan perayu kemudiannya telah mengakui melalui surat bahawa mereka telah menerima bayaran pengurangan pekerja itu. Akan tetapi, perayu telah mengatakan bahawa mereka telah berbuat demikian dengan bantahan. Mereka kemudiannya telah membuat suatu representasi C kepada Ketua Pengarah Perhubungan Perusahaan bahawa mereka menganggap yang mereka telah dipecat tanpa sebab atau alasan yang munasabah dan bahawa mereka sepatutnya dikembalikan kepada pekerjaan dahulu mereka. Ketua Pengarah itu telah merujuk perkara itu kepada menteri yang telah merujuk pertikaian itu kepada Mahkamah Perusahaan. Pada pendengaran di hadapan Mahkamah Perusahaan, D peguambela responden telah membangkitkan suatu bantahan permulaan dan menyatakan bahawa perayu telah diestop daripada membawa perkara itu ke hadapan Mahkamah Perusahaan kerana mereka telah menerima bayaran pengurangan pekerja mereka. Mahkamah Perusahaan telah menolak tuntutan itu atas bantahan E permulaan itu sahaja.

Suatu permohonan untuk certiorari bagi membatalkan award Mahkamah Perusahaan itu telah dibuat ke Mahkamah Tinggi. Hakim Mahkamah Tinggi telah memutuskan bahawa Mahkamah Perusahaan itu telah membuat kesilapan bidang kuasa kerana di bawah s 30(5) Akta Perhubungan Perusahaan 1967, estopel tidak terpakai kepada F penghukuman dalam bidang perusahaan. Akan tetapi, hakim itu telah memutuskan bahawa Mahkamah Perusahaan itu telah membicarakan merit kes itu dan beliau telah mengesahkan penolakan tuntutan perayu oleh Mahkamah Perusahaan itu.

G **Diputuskan**, membenarkan rayuan itu:
Mahkamah Perusahaan telah menolak tuntutan perayu hanya atas alasan teknikal, iaitu estopel. Mahkamah Perusahaan itu sepatutnya memberi kesemua pihak peluang untuk membentangkan keterangan dan kemudiannya memutuskan atas keterangan tersebut sama ada H penamatan pekerjaan itu adalah atas sebab tindakan pengurangan pekerja yang sebenar atau suatu pembuangan kerja tanpa sebab yang munasabah. Untuk menentukan isu sama ada ia merupakan sautu pengurangan pekerja atau pembuangan kerja, Mahkamah Perusahaan perlu menyiasat fakta-fakta dan menganalisa mereka dan membuat I keputusannya sebelum mengenakan undang-undang terhadap keputusan itu. Mahkamah Perusahaan telah gagal berbuat demikian dan itu merupakan suatu kesilapan undang-undang yang menjejaskan bidang kuasanya.]

Notes

For a case on the retrenchment of employees, see 8 *Mallal's Digest* (4th Ed) para 611.

Case referred to

1 *Hotel Malaya Sdn Bhd & Anor v National Union of Hotel, Bar and Restaurant Workers & Anor* [1982] 2 MLJ 237

Legislation referred to

Industrial Relations Act 1967 s 30(5)
Industrial Court Rules 1967 r 22(1), (2)

Appeal from: Originating Motion No R8–32–107–1987 (High Court, Kuala Lumpur)

B Lobo (*Lobo & Associates*) for the appellants.

Mazlinda bte Makhzan (*Chow Kok Ling* with her) (*Ng Yook Woon Andrew TC Saw & Co*) for the respondent.

Eusoff Chin SCJ (delivering the grounds of judgment of the court): It is not disputed that the five appellants received identical letters dated 31 October 1985, from their employer, which is the respondent to the effect that owing to economic downturn, the firm was experiencing diminished workload and that this had caused the posts held by the five appellants to become redundant. As a result, the respondent had to retrench the appellants and that they be paid retrenchment benefits.

On 12 November 1985, each of the appellants acknowledged by letter the receipt of retrenchment payments, but said they did so under protest. They then made a representation to the Director General of Industrial Relations that they considered themselves to have been dismissed without just cause or excuse and that they ought to be reinstated to their former employment. The Director General referred the matter to the Minister who after being satisfied, referred the dispute to the Industrial Court.

At the hearing before the Industrial Court, the respondent's learned counsel raised a preliminary objection stating that the appellants were estopped from bringing the matter before the Industrial Court because they had already received their retrenchment payments. The Industrial Court's award stated that on the preliminary objection alone, the appellants' claim should be dismissed. The learned High Court judge when considering an application for certiorari to quash the award of the Industrial Court correctly decided that the Industrial Court committed an error going to jurisdiction because estoppel does not, under s 30(5) of the Industrial Relations Act 1967, apply to industrial adjudication.

The learned judge, however, having scrutinized the Industrial Court's award, stated that the Industrial Court had in its award dealt with the merits of the case as well, and that was because the parties before the Industrial Court had argued on the issue whether the termination of the employment of the appellants was in fact retrenchment. The learned judge

found that because the Industrial Court had dealt with the merits of the case, he confirmed the dismissal of the appellants' claim by the Industrial Court.

Section 30(5) of the Industrial Relations Act 1967 states: 'The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.' Rule 22(1) and (2) of the Industrial Court Rules 1967 requires the President of the Industrial Court to call upon the parties before the court to adduce evidence, if any, to support their claims. The record shows that, because of the preliminary objection, there had been no evidence adduced by the appellants or the respondent before the Industrial Court. This is because the Industrial Court had not given the opportunity to either party to adduce any evidence. What happened was that upon the preliminary objection being raised by the learned counsel for the respondent, the court heard arguments based on the record and the pleadings only. This is the concluding paragraph of the award:

> Having given careful consideration to the state of the documentary evidence on record, the pleadings of the parties, and the submissions of both the learned counsel — indeed, to the case in all its circumstances — the court agrees with the case for the company and dismisses the claimants' case.

We find that the Industrial Court had dismissed the appellants' claim purely on the ground of technicalities, ie on estoppel. The Industrial Court should have given the parties the opportunity to adduce evidence and then decided on the evidence whether the termination was the result of a genuine retrenchment exercise or a dismissal without just cause. To determine the issue of whether it was retrenchment or dismissal, it is necessary for the Industrial Court to investigate the facts and analyse them and make its findings before applying the law to those findings — see *Hotel Malaya Sdn Bhd & Anor v National Union of Hotel, Bar and Restaurant Workers & Anor*[1] at p 240. This, the Industrial Court had failed to do, and that is an error of law affecting its jurisdiction.

We, therefore, allow this appeal with costs here and in the High Court, and order the Industrial Court to hear and determine the dispute referred to it by the Minister in accordance with the law.

Appeal allowed.

Reported by Prof Ahmad Ibrahim